No. 71-1553

In the Supreme Court of the United States

OCTOBER TERM, 1972

JOHN J. GILLIGAN, et al.,
Petitioners

v.

CRAIG MORGAN, et al.,
Respondents

On Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Law Revision Center hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. Oral consent of counsel for the Respondents was obtained. Consent of Petitioners was sought but refused, although counsel for Petitioners indicated that he would not oppose a motion for leave to file. Hence this motion for leave of court is necessary.

The Law Revision Center was created as a permanent division of the University of Colorado School of Law in August, 1968, to enrich the public service contributions of the School of Law

on significant issues of concern by bringing to bear upon such issues the scholarship and resources of the School of Law. Since the Spring of 1970, The Law Revision Center has been engaged in a comprehensive historical and analytical examination of the law governing the use of military troops in civil disorders. This project of The Law Revision Center was designed to supplement the empirical studies conducted by the National Advisory Commission on Civil Disorders and the President's Commission on Campus Unrest. The Center's work in this field has become a standard reference for persons concerned with the problems of controlling civil disorders with military troops, including members of Congress, the National Association of Attorneys General, and scholars of law and other disciplines.

The Center's extensive research through hundreds of cases, statutes, constitutional provisions, other authorities, and historical materials dealing with the problems which are raised by this present case has yielded a perspective which is different from that of any of the parties to this case. In particular, this research has disclosed several instances in the past when action which has been taken by legislatures, executives, or courts with respect to the use of military troops in civil disorders has proven ineffective or even counterproductive, largely because that action was undertaken without any adequate comprehension of the way in which Anglo-American law historically had dealt with these problems. Consequently, actions which appeared desirable and seemed to be well-founded have sometimes served to exacerbate rather than to alleviate the problems, leading support to George Santayana's warning that "Those who cannot remember the past are condemned to repeat it." *Life of Reason* at 284.

The crucial points of law on which the work of the Center can shed needed illumination are complex enough and subtle enough that they are easily misunderstood. They seem not to have been perceived by these parties or by the majority or dissenting judges on the court in the proceedings below. The interest of *amicus* The Law Revision Center in this case is not merely academic, however. The disposition of the present case will have substantial and unavoidable consequences upon the employment of National Guard troops in all states, including the Center's own state, Colorado. In Colorado as well as in

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Ohio and elsewhere, very recent occasions for the use or possible use of National Guard troops in civil disorders have arisen, particularly on university campuses. As a part of the University of Colorado with a clear stake in campus disorder control, the Center will be affected by the manner in which this Court disposes of the issues before it in this case.

It is the position of *amicus* The Law Revision Center that even if the specific relief sought by the prayer of the complaint in this case is relief inappropriate for a court to afford, nevertheless the complaint states facts showing a claim upon which relief can be and urgently needs to be granted. Consequently, *amicus* supports the Respondents in their contention that the Court of Appeals' reversal of the District Court's dismissal of the complaint was proper.

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December 29, 1972